IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:4-3-2002

Coram

The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY
and
The Honourable Mr.Justice K.GNANAPRAKASAM

W.A.No.147 of 2002 and W.A.M.P.No.257 of 2002

N.Balaji ... Appellant

Vs.

1. Tmt.L.M.Shanthi,

2. M/s.Indian Oil Corporation Ltd.,
rep.by its Director (Marketing),
Indian Oil Bhavan,
C-9, Ali Yavar Jang Marg,
Bandra (E),
Mumbai 400 051.

3. M/s Indian Oil Corporation Ltd.,
rep.by its General Manager (Sales)
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai 34.

4. M/s Indian Oil Corporation Ltd.,
rep.by its Senior Divisional Manager,
Marketing Division,
8/1079, Avinashi Road,
Coimbatore 18.

5. The Chairman,
Dealer Selection Board,
126-D, Thirugnanasambandam Street,
Race Course,
Coimbatore 18. ... Respondents

This writ appeal has been preferred against the order of
the learned single Judge allowing W.P.3842 of 2001 dated 21.12.2001.

! For Appellant : Mr.M.Ravindran,
Senior Counsel for

Mr.C.Prakasam

^ For Respondent No.1 : Mr.V.R.Gopalan

For Respondents 2&3 : Mr.P.N.Radhakrishnan

For Respondent No.5 : Mr.M.S.Rajasekar

: J U D G M E N T

A.S.VENKATACHALAMOORTHY, J.
The first respondent herein filed W.P.3842 of 2001 praying this Court to issue a writ of mandamus forbearing the respondents 2 to 5 herein from in any manner awarding dealership of the retail outlet at Vellode Village, Erode District in favour of the appellant herein by issuing a letter of intent or letter of appointment and further directing the respondents 2 to 5 herein to consider the first respondent herein for appointment as dealer of the said retail outlet.
2. W.P.11783 of 2001 was filed by the appellant herein praying the Court to issue a direction to the Corporation to forbear from commencing the retail outlet either by the respondents 2 to 5 or by any of his agents.
3. The learned single Judge by an order dated 21.12.2001 allowed W.P.3842 of 2001 and directed respondents 2 to 5 herein to consider the first respondent for appointment as dealer of the retail outlet at Vellode village, Erode District, subject to the satisfaction of the required conditions. In view of the said order, W.P.11783 of 2001 was dismissed.
4. The above writ appeal has been filed by the 5th respondent in W.P.3842 of 2001 against the order in W.P.3842 of 2001.
5. The admitted facts are, the respondents 2 and 3 viz., the Indian Oil Corporation, called for applications under open category for award of dealership of the retail outlet at Vellode village in Erode District. The appellant herein, the first respondent and others applied and were called for interview. On 12.12.2000 the first respondent addressed a letter to the Corporation bringing to the notice the fact that the appellant had given false statement and had suppressed material particulars and in pursuance of that first respondent was specifically called for a personal enquiry on 19.12.2000 and she produced certain documents to substantiate her case. But however, the Indian Oil Corporation granted retail outlet to the appellant herein.
6. The first respondent herein filed writ petition contending that the appellant had suppressed material facts in his application and further furnished wrong declaration about his annual income in the prescribed format viz., Appendix A, not certified by the Notary Public. The 5th respondent's further case is that the appellant failed to disclose the income from the partnership firm viz., Jai Balaji Transport; income from properties owned by him and the commission earned by PCO run by the appellant.

7. The appellant resisted the writ petition inter alia

contending that he submitted income tax Auditor's report when the application was made and also during the interview and in fact the format contains the signature of the Notary public as well as seal. It is the further case of the appellant that he is not owning any bus or lorry and that out of the three telephones standing in his name, one is running as PCO and one is kept in his house and the other is kept for lorry business. With regard to Jai Balaji Transport, the appellant contended that it was originally belonged to him and his brother-in-law and later his share was sold to his brother-in-law two years back and hence he is not running any bus or owning the said Jai Balaji Transport.

8. The learned single Judge during the course of hearing the writ petition and after satisfying that the particulars furnished by the appellant regarding his income required further information, passed an order in W.M.P No.5441 of 2001 dated 28.6.2001 and directed the second respondent to call for a report from the Vigilance Cell, after enquiry regarding the Income of the 5th respondent. Pursuant to that a report was also filed. But however, the learned single Judge, finding that the Vigilance Officer had not conducted the enquiry properly since he collected all the materials behind back of the first respondent and with the knowledge of the appellant and his Auditor and failed to permit both the parties viz., the appellant and the first respondent to make their submissions/objections, thought it necessary to ignore the said report and proceeded with consideration of rival contentions of the parties.

9. The learned single Judge after considering the materials available on record, came to the conclusion that the Income Declaration Form, originally filed by the appellant was taken away from the Corporation later and substituted by another Form and hence it is a clear case of tampering with the application of the appellant. The learned Judge has also found that the appellant was rather permitted to introduce annual return form at a later stage. On the question of income of the appellant, the learned single Judge considered the same under various heads viz., Income derived from the lorry transport service; income from lorry booking agency commission; PCO commission and income derived from the property at Koilampalayam Housing Unit and came to the conclusion that the appellant did not disclose his real income. The learned single Judge further found that it is a clear case of suppression of material facts for the purpose of obtaining dealership and bringing his income below Rs.2 lakhs.

10. Pointing out the various conditions in the advertisement calling for the application, in particular to the clause which is to the effect that if there is any wrong statement or suppression of fact it will disqualify the applicant from selection to the dealership, the learned single Judge allowed the writ petition and issued a direction to the respondents 2 to 5 to consider the first respondent for appointment as dealer of the retail outlet at Vellode village in Erode District subject to the satisfaction of required conditions.

11. The learned counsel appearing for the appellant made two-fold submissions before us. Firstly, the High Court cannot, in exercise of its jurisdiction under Article 226 of the Constitution of India, re-appreciate or re-appraise the relevant material factors,

relative qualifications and evaluation of the comparative merits of the candidates, as laid down by a Division Bench of this Court in Writ Appeal No.464 of 1995 dated 4th August, 1995, reported in 1995 MLJ 458 (Chandran v. Oil Selection Board). But the learned single Judge in this case, has erred in taking up the exercise of re-appreciating the materials available on record and coming to a different conclusion. Or in other words, according to the learned counsel, the learned single Judge has re-appraised the evidence, which the learned single Judge ought not to have done since it cannot be done.

Secondly it is contended that the learned single Judge has erred in issuing a direction to the respondents 2 to 5 herein to consider the first respondent for appointment as Dealer, subject to the satisfaction of required conditions, when there is yet another applicant, who has been ranked between the appellant and the first respondent.

12. Before we proceed to consider the first submission made by the learned counsel for the appellant, we would like to point out certain factual aspects.

13. The case of the first respondent is that along with the application, the appellant filed the Annual Income Declaration mentioning the date therein as 1st August, 2000. As the same was not Notarised as required, subsequently the appellant prepared another declaration duly notarised and managed to substitute the same for the earlier one and this could have been done only with the connivance of the respondent Corporation's Officials/Staff.

14. Page No.75 of the typed set of papers filed by the first respondent in the writ petition is a xerox copy of the Annual Income Declaration. According to the learned counsel for the first respondent, this is a copy of the Declaration originally submitted by the appellant before the Corporation. We find it is dated 1st August, 2000. We called upon the learned counsel for the appellant to show it to the party viz., the appellant, who was present in Court and to ascertain as to whether the signature contained therein is that of his. The appellant answered in the positive. The appellant however did not inform this Court as to what happened to the original of that form. We also verified the original file produced by the Corporation, but we do not find the original of that. But on the contrary, we find another form viz., Annual Income Declaration Form mentioning the same date (1 st August, 2000), signed by the appellant. Learned single Judge has clearly found in para Nos.31 and 33 of the order as under,

"He has also tampered with his application with subsequent insertions, justifying it that he has given them during the interview."

"I am disturbed at the manner in which the Selection Authorities have permitted their documents to be tampered with."

It has to be noted that respondents 2 to 5 have not filed any appeal, questioning the correctness of the above finding/observation. We are fully convinced that the claim of the first respondent is true. As rightly pointed out by the learned counsel for the first respondent, first the appellant filed one Annual Income Declaration Form and thereafter substituted it by another form. Needless to mention, this could not have been possible without the active collusion of the

Corporation officials/staff. We cannot say beyond this since we do not know who in the Corporation was responsible/who colluded with the appellant.

15. It has to be noted that the learned counsel for the appellant has not advanced any argument on the finding of the learned single Judge that the enquiry by the Vigilance Officer, who was asked to go into the question of income cannot be accepted and the learned single Judge has given valid reasons for coming to such a conclusion (i.e.) the Vigilance Officer (a) has not applied his mind; (b) did not conduct the enquiry on the real aspect of the matter; (c) did not bother to look into the original documents; (d) failed to given an opportunity to the first respondent on the materials furnished by the appellant in support of his claim; and (e) collected all materials behind the back of the first respondent, but however, with the knowledge of the appellant and his Auditor. Accordin g to the learned single Judge, this vitiates the entire exercise conducted by the Vigilance Officer.

16. Again it has to be pointed out that the learned counsel for the appellant did not advance any argument on the finding of the learned single Judge that the Auditor had issued erroneous, wrong and incorrect certificate without disclosing the correct income of the appellant and that there is a failure on the part of the appellant to disclose the income from PCO; the rental income from Koilampalayam Housing Unit; correct and full income from Jai Balaji Transport; property income and the income of his father and this deliberate failure was to bring the income below Rs.2 lakhs.

17. No challenge has been made on the finding that the appellant has suppressed the material facts with regard to the income he is deriving from various sources even before the High Court, apart from the fact that he has tampered with his applications with subsequent insertions.

18. Now, the question would be what are the powers of this Court in exercising its jurisdiction under Article 226 of the Constitution of India. In this context, we would like to refer to a few decisions, which will have a bearing on this case.

19. In a decision reported in AIR 1976 SC 425 (Rohtas Industries V. Its Union), the Supreme Court had an occasion to point out the powers of the High Court while exercising power under Article 226 of the Constitution of India, which reads thus,

"The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person-- even a private individual-- and be available for any (other) purpose, even one for which another remedy may exist. ....

But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power

has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash." (emphasis supplied)

In a case reported in AIR 1997 SC 645 (Air India Statutory Corporation v. United Labour Union), the Supreme Court in para Nos.26 (12), (13) and 27 has observed thus,

"26(12). Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

26(13). If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

27. It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations and all their actions should satisfy the basic law requirements of Article 14 . The public law interpretation is the basic tools of interpretation in that behalf relegating common law principles to purely private law field."

In (1999)8 SCC 150 (Tvl Sundaram Granites V. Imperial Granites Limited), the Supreme Court ruled that while granting of largesse is at the discretion of the State Government, its action should be open, fair, honest and completely above board.

The next ruling that can be usefully referred to is one reported in (1999)8 SCC 16 (Maharaja Chintamani Saran Nath Shahdeo V. State of Bihar), a case arising under Bihar Land Reforms Act, 1950. In that case, the land owner was originally paid a compensation calculated three times the net annual income. The land owner, not being satisfied, approached the compensation Officer, who fixed at ten times, the net annual income. The land owner also agreed to the offer and so a fresh Compensation Assessment Roll was prepared. Thereafter, the Member, Board of Revenue, took suo-motu action, reopened the case and found that the additional compensation awarded was in violation of Section 25(4) of the Act and directed the land owne r to refund the excess amount. The land owner thereafter approached the High Court in writ jurisdiction, contending that the Member, Board of Revenue, did not have the authority to pass the order and that in fact, the authority ought to have filed only an appeal under Section 27 of the said Act. It was also contended on behalf of the State that the land owner had already received the compensation determined without protest and thus he was liable to refund the excess amount. Of course, a contention was also raised that the order of the Member, Board of Revenue was legal since he had power of

superintendence, direction and control. The learned single Judge ruled that if the order of the Member, Board of Revenue was set aside, then it would be restoring an illegal order and the same was also confirmed in writ appeal. When the matter was taken to the Supreme Court, the Supreme Court also dismissed the appeal and in that context ruled as under:
"For what has been stated above, we hold that the order of the learned Member of Board of Revenue directing action to be taken for refund of the excess compensation was valid and proper though he had no jurisdiction to pass the order. In the event it is set aside it would amount to reviving an invalid order of payment of excess compensation to the appellant."

Though the prayer in the writ petition is couched as if it is a writ of mandamus, it is in fact only a certiorarified mandamus. In fact, the Supreme Court in the decision reported in AIR 1976 SC 232 (Swaran Singh v. State of Punjab), ruled thus,
"In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.
(Emphasis supplied)

20. From the above rulings, the legal position is clear that if the High Court is of the opinion that when exceptional circumstances do exist and they cry for timely judicial intervention, the High Court can interfere, though in general, the legal position is that the High Court will not re-appreciate or re-appraise the relevant material factors while exercising the jurisdiction under Article 226 of the Constitution of India. Or in other words, if the High Court is of the view that the decision arrived at by an authority (in this case the Indian Oil Corporation) is bad, because the same does not meet the test of reasonableness, fairness and justness, it can stretch its hand and render justice.
21. To put it differently, the ruling of the Division Bench of this Court reported in 1995 M.L.J. 458 (Chandran v. Oil Selection Board) would apply where there is no proof of any mala fides, collusion or fraud or manipulation of records or suppression of material facts by the applicant. In fact in that case, the Division Bench ruled thus,
"Though the learned counsel for the appellant has alleged that the entire selection is only a make believe affair and is a predetermined one, he is not in a position to pin point the irregularities, if any, in the selection. The Chairman of the 1st respondent Justice M. Maruthamuthu himself has sworn to the counter affidavit in the main writ petition filed in June, 1994 and also the additional counter affidavit

filed on 22.9.1994. He has also filed a counter affidavit in the writ appeal on 7.7.1995. As rightly pointed out by Mr.G.Masilamani, learned Senior Counsel for the 4th respondent, it is not open to the appellant to challenge the assessment of the candidates made by the members and Chairman of the 1st respondent and claim that the appellant is entitled to the award of distributorship. Though the appellant was eligible to apply, he did not merit consideration when his performance was judged at the time of interview. In our opinion, the appellant is wrong in alleging in his affidavit that the 4th respondent was favoured with the grant of distributorship with pre-conceived decisions to the exclusion of the appellant." (Emphasis supplied)

22. As per the notification calling for applications, only those who get the income of less than Rs.2,00,000/- per year were eligible to apply. Even according to the appellant, his yearly income during the relevant period was Rs.1,90,000/-. The learned single Judge considered the issue as to whether the appellant concealed the income while making the application and came to the conclusion that the appellant is guilty of 'suppression of material facts for the purpose of obtaining dealership and to bring his income below the limit of Rs.2,00,0 00/-.' This finding would necessarily imply that the real income of the appellant during the relevant period was more than Rs.2,00,000/-. It has to be noted that even in the absence of any exact positive finding with regard to the income of the appellant during the relevant period as above Rs.2,00,000/-, inasmuch as the appellant is guilty of suppressing the material facts in his application, is liable to be eschewed from consideration.

23. Generally speaking, the High Court exercising its power under Article 226 of the Constitution of India would not take up the exercise of considering disputed facts and arrive at factual findings. But this is only by way of a rule of discretion and not exclusion of jurisdiction. The High Court is not incompetent to decide an issue of fact which can be determined from the materials on record.

The Supreme Court in AIR 1976 SC 386 (D.L.F. Housing Construction (P) Ltd. v. Delhi Municipal Corporation) ruled, "In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved."

Please refer: (i) AIR 1970 SC 786 (Sharma V. Bipen)
(ii) AIR 1971 SC 1021 (Century Spinning Company v. Ulhas Nagar Municipal Corporation)

(iii) AIR 1979 UJSC 926 (Chaudhury v. Secretary, Govt.of Bihar)

24. As far as the present case is concerned, it has to be noted that there was no necessity for the learned single Judge to arrive at an exact figure about the income which the appellant got during the relevant year which alone would have stood in the way of considering the issue.

25. At the risk of repetition, it may be stated that the mere finding by the learned single Judge that the appellant suppressed the material facts in the application he made to the respondent/Oil Corporation would be sufficient for this Court to throw him out, since in the application itself the appellant has made the following declaration:

"I, N.Balaji, hereby certify that the information given above is true to the best of my knowledge and belief. Any wrong information/ suppression of facts will disqualify me from being considered for the dealership/ distributorship."

26. As far as the second contention is concerned, we verified the records and we find that the Selection Board has awarded first rank to the appellant and second rank to the 1st respondent and not 3rd rank to the first respondent as claimed by the appellant. That being so, the learned single Judge is perfectly right in issuing direction to the respondents 2 to 5 herein as referred supra.

27. There are absolutely no merits in this writ appeal and consequently the same is dismissed at the stage of admission itself. Connected W.A.M.P.No.257 of 2002 is also dismissed.

Index: Yes (A.S.V.J.) (K.G.P.J.)
vr 4-3-2002

Sd/-
Assistant Registrar
/ True Copy /

Sub Assistant Registrar